

MAR 17 2009

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6062

DATE COMPLAINT FILED: 8/27/08

DATE OF NOTIFICATION: 9/03/08

LAST RESPONSE RECEIVED: 10/23/08

DATE ACTIVATED: 11/17/08

STATUTE OF LIMITATIONS: 8/01/13-
11/05/13

COMPLAINANT:

Christopher S. Morgan

RESPONDENTS:

The Harry Truman Fund
Jason Bennett
George Scarola

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)(A)
2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(9)(A)
2 U.S.C. § 431(20)
2 U.S.C. § 431(21)
2 U.S.C. § 431(22)
2 U.S.C. § 431(23)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441i(h)(1)
11 C.F.R. § 100.22
11 C.F.R. § 100.24
11 C.F.R. § 100.25
11 C.F.R. § 100.57

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

I. INTRODUCTION

The Complaint in this matter alleges that the Harry Truman Fund ("HTF"), a
state-registered political action committee, engaged in federal election activity ("FEA")

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1 by distributing get-out-the-vote ("GOTV") mailers to voters prior to the 2008
2 Washington State primary election that advocated for the election of federal candidates.
3 The Complaint alleges that HTF violated the Federal Election Campaign Act of 1971, as
4 amended ("the Act") by using non-federal funds to finance the mailer and failed to
5 register with the Commission despite allegedly surpassing the \$1,000 threshold in
6 2 U.S.C. § 431(4)(A). The Complaint also names as Respondents Jason Bennett and
7 George Scarola, identified as HTF treasurer and executive director, respectively.

8 In a joint response, Respondents acknowledge responsibility for the mailer and
9 agree that it meets the definition of FEA by promoting the Democratic Party. However,
10 Respondents assert that HTF is not a political party committee and so the restrictions on
11 funding FEA do not apply. Further, Respondents claim that because HTF's
12 communications do not expressly advocate the election or defeat of a clearly identified
13 federal candidate, HTF has not made expenditures and thus is not subject to the
14 registration and reporting requirements of the Act. As such, Respondents seek dismissal
15 of the Complaint.

16 Based upon the Complaint, Response, and our review of available information,
17 we recommend that the Commission find reason to believe that Respondents violated
18 2 U.S.C. § 441i(b)(1) by using non-federal funds to pay for the HTF mailer. We also
19 recommend that the Commission find no reason to believe that Harry Truman Fund
20 violated 2 U.S.C. §§ 433 or 434 by failing to register and report as a political committee.
21 Finally, we recommend no reason to believe that Jason Bennett or George Scarola
22 violated the Act.

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II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

1. The Harry Truman Fund

HTF is not registered with the Commission as a political committee. HTF is registered as a political committee in the State of Washington. According to a "Mission Statement" included in the Response, HTF "is an independent political action committee dedicated to electing and retaining a Democratic majority in the Washington State House of Representatives." Response Exhibit B. According to the Response, HTF is neither a party committee nor an association of candidates for state or local office or state or local officeholders. Response at 2. HTF's amended Political Committee Registration filed with the Washington Public Disclosure Commission on January 17, 2008 identifies HTF's "purpose or description" as "Other Political Committee - PAC, caucus committee, political club, etc." See Response Attachment A. Public records list Respondents Jason Bennett and George Scarola among the original board members of HTF. Currently, Bennett and Scarola serve as HTF treasurer and executive director, respectively.

HTF's state disclosure reports reflect over \$1,000,000 in receipts for calendar year 2008, mostly from state and federally-registered political committees, labor unions and Indian tribes in amounts up to \$45,000. See Washington State Public Disclosure Commission, <http://www.pdc.wa.gov/QuerySystem/caucuscommittees.aspx?erumbs=true>. In addition, HTF made disbursements totaling over \$750,000 for the year, mostly to Washington State Democratic Party entities and to vendors.¹ HTF disclosed in excess of \$188,000 in

¹ To the extent that HTF is a state political action committee, it is able to receive contributions in unlimited amounts from PACs, unions, corporations and other entities except for candidate committees. As a State

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1 payments to the House Democratic Campaign Committee ("HDCC") for "exempt"
2 expenses such as staff salaries and rent. The public record indicates that HDCC initially
3 paid for these items and then HTF "reimbursed" HDCC; it thus appears that HTF paid for
4 HDCC's overhead.² Like HTF, HDCC is registered as a political committee in the State
5 of Washington. According to its website, HDCC is the "political arm of the House
6 Democratic Caucus," charged with preserving a Democratic majority in the state.
7 See <http://www.hdcc.org/>. Its stated mission is similar to that of HTF: "...to provide
8 grassroots, strategic, and monetary support in order to maintain a Democratic majority in
9 the state legislature."³ See *id.* HDCC listed HTF as a "related entity" on an IRS form
10 where HDCC described the relationship between HDCC and HTF as "party building
11 oversight." IRS Form 8871 (Notice of Section 527 Status) filed by HDCC on
12 August 11, 2000. Public records indicate Jason Bennett and George Scarola were among
13 the original board members of HDCC. Bennett is currently the custodian of records and
14 treasurer of HDCC and served as its Operations Director during 1999 – 2004; Scarola
15 was HDCC's executive director.⁴

PAC, HTF can make contributions to state and local party committees in unlimited amounts for "exempt" activities, and subject to a \$4,000 contribution limit for non-exempt activities. See http://www.pdc.wa.gov/filers/contribution_limits.aspx.

² Local media has referred to HTF as the "soft money committee" for the Washington State House Democrats. See Chris Mulick, 'Top Two' Primary Will Signal Fall's Hot Races, (Aug. 19, 2008), Bellingham Herald, <http://www.bellinghamherald.com/elections/v-print/story/506050.html>; Chris Mulick, Probing House Democrats' Fundraising Advantage, Olympia Dispatch, (Aug. 18, 2008), <http://www.tri-cityherald.com/olympiadispatch/v-print/story/281062.html>.

³ HDCC has a state senate counterpart, the Senate Democratic Campaign Committee, and the Roosevelt Fund is the parallel organization to HTF. See Chris Mulick, 'Top Two' Primary Will Signal Fall's Hot Races, (Aug. 19, 2008), Bellingham Herald, <http://www.bellinghamherald.com/elections/v-print/story/506050.html>; Chris Mulick, Probing House Democrats' Fundraising Advantage, Olympia Dispatch, (Aug. 18, 2008), <http://www.tri-cityherald.com/olympiadispatch/v-print/story/281062.html>. Bennett is the treasurer of the Roosevelt Fund as well as HTF. <http://www.pdc.wa.gov/rpting/default.aspx?docid=1277326>.

⁴ Additionally, HTF, HDCC, the Senate Democratic Campaign Committee, and the Roosevelt Fund all list the same street address, email address and phone number on their Political Committee Registration form line 9, campaign book inspection site. The listed email address is that of Argo Strategics, the political

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HTF registered with the IRS under section 527 of the Internal Revenue Code in September 2000, disclosing the following organizational purpose:

To recruit, train, and educate candidates to run for public office, publish booklet[s] of prospective candidates for elected officials and interested citizens to run for House Seats in the State of Washington. May contribute monetary support.

IRS Form 8871 filed by HTF on September 20, 2000. HTF last filed a report of contributions and expenditures with the IRS in 2002.

2. The Harry Truman Fund Mailer

In August 2008, HTF "paid for the production and postage of a mass mailing," Response at 2, that was distributed prior to the August 19 primary election. The Complaint alleges that HTF spent over \$120,000 on the mailer, citing two payments disclosed by HTF on its state disclosure report: \$40,058 on August 4 for "GOTV Supercard, Postage (USPS, Cap City Press)," and \$82,045 on August 8 for "Printing/Design GOTV pieces (Cap City Press, Pub Mailing Service)." See Complaint Exhibit B. The Response makes no reference to the amount HTF spent on the mailer.

The HTF mailer identifies no candidates, federal or otherwise. Instead, one side of the mailer includes a map of the United States with the heading "BAD REPUBLICAN POLICIES" and an arrow pointing towards Washington, D.C. Attachment 1, page 1. A second caption states "HAVE HURT FAMILIES HERE" with an arrow pointing to Washington State. Underneath the map, the mailer states, "Thankfully, Democrats in Washington State are leading the way." The mailer language praises Washington State Democrats for fiscal responsibility, clean energy technology, and advancements in education, concluding with the directive "VOTE DEMOCRATIC IN 2008 Your vote

1 makes a difference for you, your family, and your future!" The other side of the mailer
2 begins with the heading "WHEN REPUBLICAN GEORGE W. BUSH ENTERED THE
3 WHITE HOUSE:" and compares the "2001" prices of gas and milk with "today" prices,
4 concluding with the tagline, "HAD ENOUGH OF GEORGE W. BUSH AND
5 REPUBLICAN POLICIES?" Attachment 1, page 2. Finally, the mailer contains a
6 disclaimer stating "Paid for by the Harry Truman Fund." *See id.*

7 **B. Legal Analysis**

8 **1. Federal Election Activity**

9 The Act mandates that amounts expended or disbursed for "federal election
10 activity" by a state or local political party committee be made with funds subject to the
11 limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C. § 441i(b)(1).⁵
12 The funding restrictions apply to all state and local party committees regardless of
13 whether they are registered as political committees with the Commission. *See* 11 C.F.R.
14 § 300.36(a); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money,
15 67 Fed. Reg. 49064, 49065 (July 29, 2002). Further, the funding restrictions also apply
16 to entities directly or indirectly established, financed, maintained, or controlled by a state
17 or local political party committee, and to associations or similar groups of candidates for
18 state or local office or of individuals holding state or local office. *See* 2 U.S.C.
19 § 441i(b)(1).

20 FEA includes GOTV and generic campaign activity conducted in connection with
21 an election in which a federal candidate appears on the ballot. *See* 2 U.S.C.

⁵ The ability of a state or local party committee to use "Levin funds" for FEA is not at issue here. *See* 2 U.S.C. § 441i(b)(2).

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1 § 431(20)(A)(ii); *see also* Definition of Federal Election Activity: Explanation and
2 Justification, 71 Fed. Reg. 8926, 8927 (Feb. 22, 2006). "Generic campaign activity" is in
3 turn defined as "a public communication that promotes or opposes a political party and
4 does not promote or oppose a clearly identified Federal candidate or non-Federal
5 candidate." 2 U.S.C. § 431(21); 11 C.F.R. § 100.25.⁶ Finally, the Act defines "public
6 communication" to include a mass mailing, which means a mailing of more than 500
7 pieces of mail matter of an identical or substantially identical nature within any 30-day
8 period. 2 U.S.C. §§ 431(22) and 431(23).

9 The Complaint alleges that HTF engaged in FEA when it produced and
10 disseminated a mailer prior to the Washington State primary election that included state
11 and federal candidates on the ballot. The Complaint further alleges that HTF's funding
12 and the amount expended for the mailer, assertedly \$122,058, was almost entirely from
13 prohibited sources. Complaint at 1. In response, HTF acknowledges paying for the
14 mailer and that the mailer constituted FEA because it promoted the Democratic Party
15 without promoting or opposing a clearly identified federal or non-federal candidate.
16 Response at 2; *see* 2 U.S.C. §§ 431(20)(A)(ii) and 431(21). In view of the
17 uncontroverted allegation that HTF spent over \$120,000 on the mailer, the mailer appears
18 to qualify as a mass mailing and therefore a public communication. *See* 2 U.S.C.
19 §§ 431(22) and 431(23).

20 HTF argues, however, that it is not required to use federal funds for FEA because
21 it does not qualify as a party committee organization subject to the funding limitations,
22 prohibitions, and reporting requirements under the Act. Response at 3-4. Specifically,

⁶ In a 2007 Notice of Proposed Rulemaking, the Commission provided as an example of generic campaign activity, "Vote for the Democrats on May 4th." *See* Proposed Rules, Federal Election Activity and Non-Federal Elections, 72 Fed. Reg. 31473, 31475 (June 7, 2007).

1 Respondents assert that HTF is neither a federal political committee, state or local party
2 committee, nor an association of candidates for state or local office or state or local
3 officeholders and therefore is not restricted by funding limitations or prohibitions.
4 Response at 3; *see* 2 U.S.C. § 441i(b). Respondents insist that HTF is not “a part of the
5 official Democratic Party structure, nor is it established, financed, maintained, or
6 controlled by the official party.” Response at 3. In support of their assertion,
7 Respondents submitted copies of HTF’s amended Political Committee Registration filed
8 with the Washington Public Disclosure Commission and a “Mission Statement” for HTF.
9 *See* Response Exhibits A and B. The registration identifies HTF as a “PAC, caucus
10 committee, political club, etc.” rather than a “Bona Fide Political Party Committee” and
11 leaves blank a field for “[r]elated or affiliated committees.” Response Exhibit A. HTF
12 highlights the portion of its Mission Statement that states that HTF is “an independent
13 political action committee” that is “governed by an independent board of directors.”
14 Response at 3-4 and Exhibit B.

15 Other statements on HTF’s Mission Statement, however, suggest that HTF may
16 be a political party committee. HTF’s Mission Statement states HTF’s purpose as
17 providing “necessary infrastructure to recruit, train, and support winning Democratic
18 candidates in the Washington State House of Representatives.” Response Exhibit B. Its
19 “Major tasks” include local party building and voter registration.

20 Further, although Respondents assert independence from the “official Democratic
21 structure,” *see* Response at 3, local media alludes to a close relationship between HTF
22 and Washington State House Democrats. *See* Jon Savelle, *Campaign Money Follows*
23 *Political Power, Cheryl Pflug Tops Donations with \$160,000 Reported so Far,*

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1 10/28/2008 The Issaquah Press, <http://www.issaquahpress.com/2008/10/28/campaign->
2 [money-follows-political-power/](http://www.issaquahpress.com/2008/10/28/campaign-money-follows-political-power/); Chris Mulick, *Update: Pro-Rossi Mailers Could Spell*
3 *Trouble for Republican Party* 9/23/2008, [http://www.tri-](http://www.tri-cityherald.com/olympiadispatch/vprint/story/325567.html)
4 [cityherald.com/olympiadispatch/vprint/story/325567.html](http://www.tri-cityherald.com/olympiadispatch/vprint/story/325567.html). Local media suggest that
5 HTF is managed by State House Democrats and specifically refer to IITF as the House
6 Democrats' exempt committee. Furthermore, public records reflect significant financial
7 ties between HTF and the HDCC. For calendar year 2008, HTF contributed in excess of
8 \$188,000 to HDCC for overhead and "exempt" expenses including staff salary, rent, and
9 reimbursements.⁷ Jason Bennett and George Scarola were original board members of
10 both HTF and HDCC. Currently, Bennett serves as the treasurer of both HTF and HDCC
11 and served as the Operations Director of HDCC during 1999 – 2004.⁸ Scarola is the
12 executive director of HTF and public records provide that he has held the same leadership
13 position with HDCC.

14 To determine whether HTF is subject to the limitations, prohibitions and reporting
15 provisions of 2 U.S.C. § 441i(b) for its spending on FEA such as the subject mailer, we
16 examine whether HTF was directly or indirectly established, financed, maintained, or
17 controlled by a state political party. See 2 U.S.C. § 441i(b)(1). The Commission's
18 regulations define "directly or indirectly establish, maintain, finance, or control" through

⁷ Under the Washington State Fair Campaign Practice Act codified at WASH. REV. CODE § 42.17.640, certain contributions made to bona fide political parties are not subject to contribution limits. These funds are considered exempt funds and can only be expended for the enumerated purposes outlined in the statute, provided none of the activities promote or are in direct association with an individual candidate. These activities include: expenditures or contributions for voter registration, absentee ballot information, get-out-the-vote campaigns, precinct inspectors, sample ballots, ballot counting, an internal organization or fund raising. See WASH. REV. CODE § 42.17.640 (2006). The statute on its face does not limit the exemption to payments made by state or local party committees.

⁸ In Washington State, the Washington State Democratic Central Committee ("WSDCC") serves as the state-wide umbrella organization for the Democratic Party. See <http://www.wa-democrats.org/>. State disclosure reports indicate that WSDCC disbursed \$630,000 to HDCC on October 1, 2008 for undisclosed purposes.

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1 a series of factors set forth at 11 C.F.R. § 300.2(c)(2)(i) through (x), such factors to be
2 "examined in the context of the overall relationship between" between the state party and
3 the entity. *See* 11 C.F.R. § 300.2(c)(2).

4 An analysis of the relationship between HTF and HDCC suggests that HDCC, an
5 arm of the state party, may have directly or indirectly established, financed, maintained,
6 or controlled HTF. The available information indicates that HDCC and HTF have
7 overlapping officers: Jason Bennett is the treasurer for both organizations, and has had a
8 leadership role in HDCC at the same time he has had financial control of HTF. George
9 Scarola is the executive director of HTF and also had a leadership role in HDCC during
10 that same period. *See* 11 C.F.R. § 300.2(c)(2)(v). Bennett and Scarola were board
11 members of HDCC and HTF's payment of HDCC's overhead costs appears to show that
12 the two entities "have similar patterns of receipts or disbursements that indicate a formal
13 or ongoing relationship between the sponsor and the entity." *See* 11 C.F.R.
14 § 300.2(c)(2)(x). State disclosure reports reflect that HTF reimbursed HDCC for
15 "exempt" expenses – rent and salary – on a monthly basis in amounts ranging from
16 \$11,000 to \$24,000 and totaling over \$188,000 during 2008. It appears that HDCC
17 initially paid such costs and then was reimbursed by HTF. For example, HDCC
18 disclosed the following rent payments:

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1

Payee	Date	Amount	Description
Sobel Properties	2/21/2008	6,100.00	Rent, parking, deposit
Sobel Properties	3/26/2008	2,100.00	Rent
Sobel Properties	4/23/2008	2,100.00	Rent
Sobel Properties	6/25/2008	2,100.00	Rent
Sobel Properties	7/25/2008	2,100.00	Rent July
Sobel Properties	8/25/2008	2,100.00	Rent
Sobel Properties	9/22/2008	2,100.00	October Rent
Sobel Properties	10/27/2008	2,100.00	November Rent
Sobel Properties	12/23/2008	2,100.00	Rent

2

3 HTF disclosed the following payments to HDCC, which cover rent as well as other

4 HDCC overhead:

Payee	Date	Amount	Description
HDCC	1/15/2008	11,293.42	Nov exempt reimbursement
HDCC	1/15/2008	12,237.04	Exempt expenses reimbursement Dec
HDCC	2/11/2008	14,491.95	Jan exempt reimbursement
HDCC	4/11/2008	11,501.67	Est reimb for exempt work
HDCC	4/15/2008	14,307.16	Approx cost of Feb exempt services
HDCC	5/20/2008	16,766.30	Exempt reimbursement - April
HDCC	7/02/2008	19,133.06	Overhead-staff salary, rent - June
HDCC	7/18/2008	19,133.06	Staff overhead, rent - July
HDCC	9/22/2008	23,577.18	August invoice
HDCC	9/30/2008	20,147.47	Exempt reimbursement for September
HDCC	12/03/2008	24,243.56	Reimburse exempt expenses - NOV

5

6 We believe this substantial financial relationship between HTF and HDCC – HTF pays

7 HDCC's overhead – establishes a similar pattern of receipts or disbursements that

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1 indicates a formal or ongoing relationship between the entities.⁹ See 11 C.F.R.
2 § 300.2(e)(2)(x). Beyond satisfying this factor of the Commission's definition of
3 "directly or indirectly establish, finance, maintain, or control," the financial relationship
4 between HTF and HDCC suggests a more intrinsic partnering – that HTF functions as an
5 exempt account of the HDCC. A local media report describes HTF as the "soft money
6 committee" for the Washington State House Democrats. See Chris Mulick, 'Top Two'
7 *Primary Will Signal Fall's Hot Races* (Aug. 19, 2008), Bellingham Herald,
8 <http://www.bellinghamherald.com/elections/v-print/story/506050.html>. Although the
9 funding flows from HTF to HDCC, not the other way around as contemplated by the
10 "financing" portion of "establish, finance, maintain, or control," see 11 C.F.R.
11 § 300.2(c)(2)(vii)-(viii), the close financial connection between the two organizations
12 suggests that HDCC may have established, maintained, or controlled HTF. Furthermore,
13 HDCC and its leadership, as demonstrated by George Scarola's executive director
14 positions with both HTF and HDCC, are in a position to control HTF's state exempt
15 funds.
16 Although HTF claims independence from the state party, HTF's payments for
17 HDCC's overhead as well as the overlapping officers Jason Bennett and George Scarola
18 raises the question of whether HDCC directly or indirectly established, financed,
19 maintained, or controlled HTF so that HTF could help finance the party committee. See
20 11 C.F.R. § 300.2(c)(2). If so, HTF would be subject to the restrictions of 2 U.S.C.

⁹ It further appears that HTF and HDCC have similar patterns of disbursements to vendors which may suggest that HDCC directly or indirectly established, financed, maintained, or controlled HTF. See 11 C.F.R. § 300.2(c)(2)(x). Specifically, state disclosure reports reflect disbursements by HTF and HDCC to Chinook Consulting, MNP Partners, Inc., and Myers Research & Strategic Services for issue surveys, voter polls, and mail bills. Further, both HTF and HDCC made payments to Qwest Communications for GOTV calls. See <http://www.pdc.wa.gov/QuerySystem/committees/caucusdata.aspx>.

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1 § 441i(b) that require spending on FEA such as the HTF mailer to be subject to the
2 limitations, prohibitions and reporting provisions of the Act. See 2 U.S.C. § 441i(b)(1).
3 HTF's state disclosure reports suggest that the funds it spent on the mailer may have
4 consisted of funds outside the limits and prohibitions of the Act, such as labor
5 organization funds. See 2 U.S.C. § 441b(a). Further, such funds were not disclosed
6 under the Act's provisions. See 2 U.S.C. § 441i(b)(1). Therefore, there is reason to
7 investigate whether Harry Truman Fund is directly or indirectly established, financed,
8 maintained, or controlled by the Washington House Democratic Campaign Committee
9 and thus is an organization required to use federal funds for federal election activity such
10 as the subject mailer. Accordingly, we recommend that the Commission find reason to
11 believe that the Harry Truman Fund violated 2 U.S.C. § 441i(h)(1) in connection with the
12 HTF mailer.

13 **2. Political Committee Status**

14 The Complaint alleges that the costs associated with HTF's mailer exceeded the
15 registration requirements of the Act. The Act defines a "political committee" as any
16 committee, club, association, or other group of persons that receives "contributions" or
17 makes "expenditures" for the purpose of influencing a federal election which aggregate in
18 excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The term "contribution"
19 is defined to include "any gift, subscription, loan, advance, or deposit of money or
20 anything of value made by any person for the purpose of influencing any election for
21 Federal office." 2 U.S.C. § 431(8)(A)(i). The term "expenditure" is defined to include
22 "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything

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1 of value, made by any person for the purpose of influencing any election for Federal
2 Office." 2 U.S.C. § 431(9)(A)(i).

3 The Commission's approach to complaints alleging that organizations are
4 political committees has evolved over time. For organizations operating during the 2004
5 election cycle, the Commission concluded there was reason to investigate whether they
6 had triggered political committee status when the available information demonstrated that
7 the objective of a group was to influence a federal election and the group raised and spent
8 substantial sums of money in furtherance of that objective. In such instances, the
9 Commission concluded it was appropriate to investigate whether, among those funds
10 spent and received, the groups had made \$1,000 in "expenditures" or received \$1,000 in
11 "contributions."¹⁰ See, e.g., the Factual and Legal Analysis of MURs 5577 and 5620
12 (National Association of Realtors – 527 Fund).

13 For matters arising out of the 2006 election cycle and beyond, however, the
14 Commission indicated during a discussion of MUR 5842 (Economic Freedom Fund) in
15 the September 11, 2007 Executive Session that, due to developments in the law,
16 including the distillation of the meaning of "expenditure" through the enforcement
17 process and the promulgation of 11 C.F.R. § 100.57 addressing when funds received in
18 response to solicitations are treated as contributions, it would now require that there be
19 specific information suggesting an expenditure was made or a contribution received prior
20 to authorizing an investigation. As set forth below, based on a review of the available

¹⁰ The Commission had observed in prior matters involving the issue of political committee status that the complainant and the Commission will not have access to all solicitations and communications at this preliminary stage of the enforcement process in the vast majority of cases. For this reason, the Commission did not require evidence that the organization triggered the statutory threshold of \$1,000 in contributions or expenditures before finding reason to believe, provided available information suggested that the organization has the sole or primary objective of influencing federal elections and has raised and spent substantial funds in furtherance of that objective. See, e.g., the Factual and Legal Analyses of MURs 5487 (Progress for America Voter Fund) and 5751 (The Leadership Forum).

information, there is insufficient information suggesting that HTF made \$1,000 in expenditures or received \$1,000 in contributions.¹¹

a. There is insufficient information to conclude that HTF has made expenditures in excess of \$1,000

In determining whether an organization has made an expenditure, the Commission "analyzes whether expenditures for any of an organization's communications made independently of a candidate constitute express advocacy either under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b)." Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5606 (Feb. 7, 2007). Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "re-elect your Congressman," "vote against Old Hickory," or "Bill McKay in '94," or uses campaign slogan(s) or individual word(s), which in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. 11 C.F.R. § 100.22(a). The Commission's regulations also provide that a communication will be considered express advocacy if it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and about which "reasonable minds could not differ as to whether it encourages actions to elect or defeat" a candidate when

¹¹ To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). The Commission has long applied the Court's major purpose test in determining whether an organization is a "political committee" under the Act, and it interprets that test as limited to organizations whose major purpose is federal campaign activity. See Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007). In view of HTF's close relationship with the Washington State Democratic Party, it is not clear whether the "major purpose" analysis would apply to HTF, an issue that we do not need to address in view of our conclusion that available information does not suggest that HTF meets the statutory threshold for political committee status.

1 taken as a whole and with limited reference to external events, such as the proximity to
2 the election. 11 C.F.R. § 100.22(b).

3 The HTF mailer does not constitute express advocacy under section 100.22(a) or
4 section 100.22(b), both of which require the identification of a federal candidate.

5 Although the mailer urges the reader to "Vote Democratic," it does not name a clearly
6 identified federal candidate. The only individual mentioned is George W. Bush, an
7 individual who was not seeking federal office at the time the mailer was disseminated.
8 As such, HTF did not satisfy the statutory threshold for political committee status by
9 making an expenditure in excess of \$1,000. See 2 U.S.C. § 431(4).

10 b. There is insufficient information to conclude that HTF
11 has received contributions in excess of \$1,000
12

13 The term "contribution" is defined to include "any gift, subscription, loan,
14 advance, or deposit of money or anything of value made by any person for the purpose of
15 influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). A gift,
16 subscription, loan, advance, or deposit of money or anything of value made by any
17 person in response to any communication is a contribution to the person making the
18 communication if the communication indicates that any portion of the funds received will
19 be used to support or oppose the election of a clearly identified Federal candidate.
20 11 C.F.R. § 100.57(a).

21 The available information does not include any HTF solicitations. The Complaint
22 did not allege that HTF received contributions under 11 C.F.R. § 100.57 and did not
23 provide copies of solicitations that might satisfy this provision. The Response asserts that
24 the Complaint fails to present any evidence that HTF solicits or receives federal
25 contributions. Response at 3. Respondents did not submit any information that would

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1 clarify the source of its funding and did not provide copies of solicitations. Accordingly,
2 the available information is insufficient to conclude that HTF has satisfied the statutory
3 threshold for political committee status by receiving contributions for federal elections
4 exceeding \$1,000. See 2 U.S.C. § 431(4). Finally, because we conclude that the Harry
5 Truman Fund did not receive contributions or make expenditures in excess of \$1,000, it is
6 unnecessary for the Commission to make a determination as to the major purpose of the
7 Harry Truman Fund.

8 C. Conclusion

9 Therefore, we recommend that the Commission find reason to believe that the
10 Harry Truman Fund violated 2 U.S.C. § 441i(b)(1) in connection with the IITF mailer.
11 We further recommend the Commission find no reason to believe that the Harry Truman
12 Fund violated 2 U.S.C. §§ 433 or 434 by failing to register and report as a political
13 committee with the Commission. Because liability under section 441i(b) appears to
14 attach to the entity as opposed to individuals, we recommend that the Commission find
15 no reason to believe that Jason Bennett or George Scarola violated the Act in this matter.

16 III. INVESTIGATION

17 This matter will require an investigation in order to ascertain whether the Harry
18 Truman Fund is established, maintained, financed, or controlled by a state or local
19 political party committee and therefore required to use funds subject to the limitations,
20 prohibitions, and reporting requirements of the Act. See 2 U.S.C. § 441i(b)(1).
21
22
23

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IV. RECOMMENDATIONS


1. Find reason to believe that the Harry Truman Fund violated 2 U.S.C. § 441i(b)(1) in connection with the Harry Truman Fund mailer.
2. Find no reason to believe that the Harry Truman Fund violated 2 U.S.C. §§ 433 or 434 by failing to register and report as a political committee with the Commission.
3. Find no reason to believe that Jason Bennett or George Scarola violated the Act.
4. Approve the attached Factual and Legal Analysis.
5.
6. Approve the appropriate letters.

3/17/09
Date

Thomasenia P. Duncan
General Counsel

BY: 
Ann Marie Terzaken
Associate General Counsel
for Enforcement


Mark Allen
Assistant General Counsel



Shana M. Broussard
Attorney

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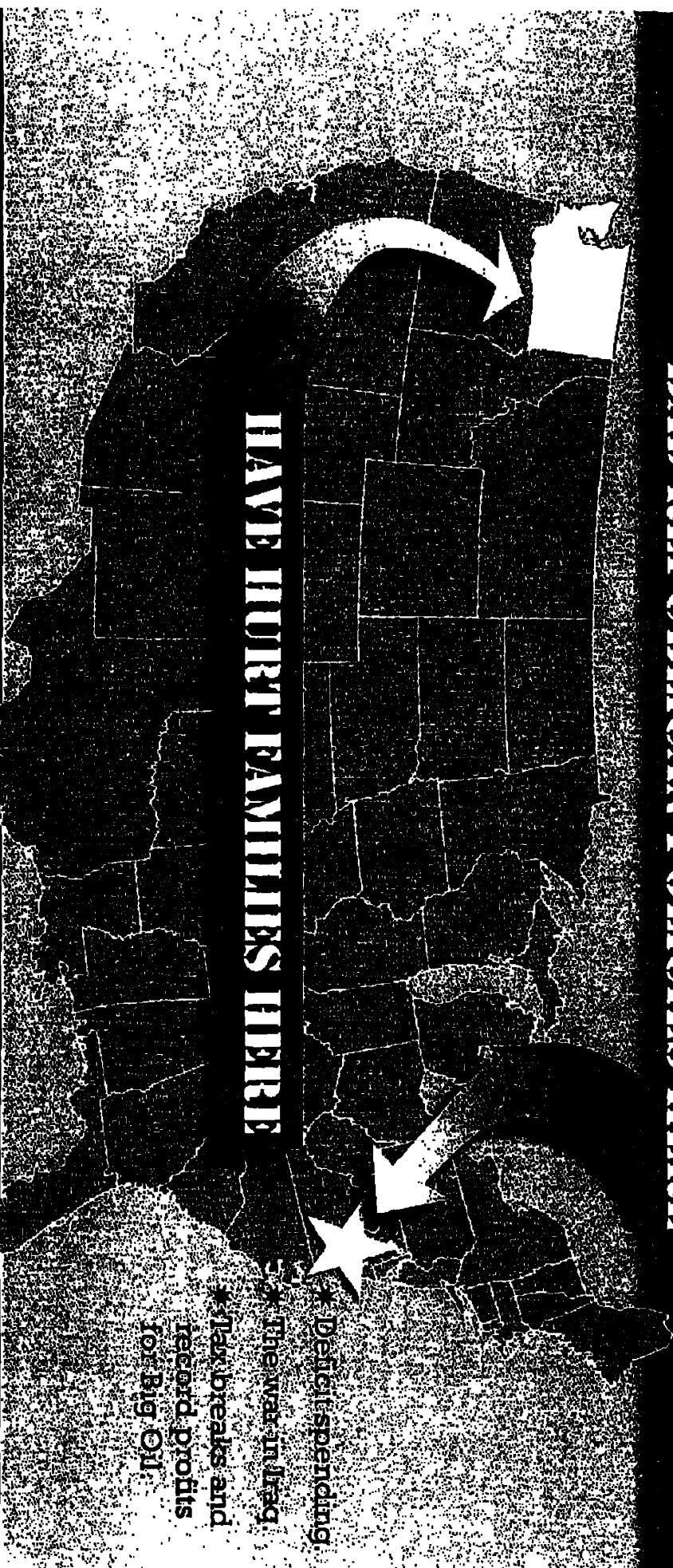
Attachments:

1. Harry Truman Fund Mailer

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Exhibit A

BAD REPUBLICAN POLICIES HERE



HAVE HURT FAMILIES HERE

- * Deficit spending.
- * The war in Iraq.
- * Tax breaks and record profits for Big Oil.

Thankfully, Democrats in Washington State are leading the way.

- ✓ A balanced budget with record reserves.
- ✓ Economic policies that create family wage jobs, invest in clean energy technology, and help small business.
- ✓ Real advancements in education, health care for every child, and action on climate change.

VOTE

DEMOCRATIC IN 2008

*Your vote makes
a difference for you, your
family, and your future.*

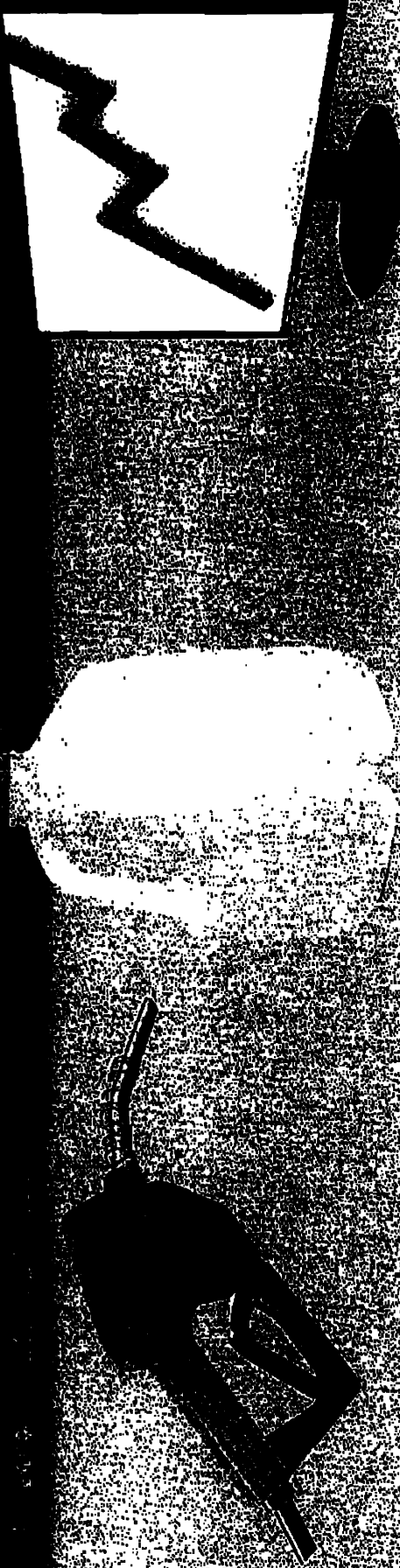
Attachment 1

1 of 2

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Exhibit A

WHEN REPUBLICAN GEORGE W. BUSH ENTERED THE WHITE HOUSE:



2001: Gas was \$1.46/gallon
TODAY: \$4.35/gallon

2001: Milk was \$2.90/gallon
TODAY: \$3.89/gallon

2001: Federal surplus \$184 billion
TODAY: Federal deficit \$410 billion

(source: oil.doe.gov)

(source: www.fda.gov)

(source: politcs.gov)

HAD ENOUGH OF GEORGE W. BUSH AND REPUBLICAN POLICIES?

PAID FOR BY THE
HARRY TRUMAN FUND

PO Box 9100
Seattle, WA 98109



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